IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLCIATION NO. 56 OF 2007

Mr. Prashant Naik,
R/o H.No. 37, Gavliwada,
Netravali, Goa. .... Petitioner

V/s

STATE
(by the Public Prosecutor). .... Respondent

Mr. A.F. Diniz, Advocate for the Petitioner.
Mr. C.A. Ferreira, Public Prosecutor for the Respondent.

CORAM : N.A. BRITTO, J.

DATE : 4th OCTOBER, 2007.

ORAL ORDER:

Heard Shri Diniz, the learned Counsel on behalf of the Petitioner/Accused and Shri C.A. Ferreira, the learned Public Prosecutor on behalf of the Respondent.

2. This revision is directed against the judgment dated 31/08/2007 of the learned Additional Sessions Judge by which the conviction and sentence under Sections 279, 304-A IPC imposed upon the accused has been upheld.

3. There is no dispute that three vehicles were involved directly or indirectly in the accident which took place on 29/01/2004 at about 15.45 hrs.

at Chicalim on Vasco-da-Gama to Cortalim road. All three vehicles were proceeding in one direction namely all were coming from Vasco-da-Gama to Cortalim. The trailer truck bearing no. GA-01-W-5881 was driven by Sripal Singh who was not examined in the trial as according to the prosecution he was not available. The second vehicle was the Kinetic Honda scooter bearing no. GA-02-L-0617 driven by deceased Ganpat Bandekar on which his wife Mrs. Poonam Bandekar was also travelling. Both of them died in the said accident. The third was the KTC bus GA-01-X-0285 driven by the accused and the latter was charged and tried for the said offences.

4. The allegation against the accused was that on the said date and time the said scooterist Ganpat Bandekar was overtaking the said lorry no. GA-01-W-5881, as the road in front was clear, and while the said scooterist was about to overtake the said lorry driven by the said Sripal Singh, the said KTC bus driven by the accused came from behind in a very high speed and dashed against the scooterist and both were flung on the road, with the impact, motionless and another scooterist stopped the KTC bus at quite some distance. This allegation was essentially based on the statement of the said Sripal Singh who had claimed that he had witnessed the accident through the rear view mirror.

5. To prove the charge against the accused under Sections 279, 304-A,

prosecution examined seven witnesses. There was no dispute raised that the accused was not driving the said KTC bus and otherwise also this fact that the accused was driving the said bus was proved with the evidence of Azimuddin Shaikh/PW2 and Laxmikant Warik/PW3, the latter being the conductor of the KTC bus who otherwise did not support the story of the prosecution. All that he stated was that he had heard the dash sound and the accused stopped after travelling some distance and after that he got down to see what had happened. Then he had seen the said scooter and two persons, one male and other female fallen down on the ground to be told by someone that they were dead. He clearly stated that he could not tell on account of whose mistake the said accident had taken place. There was also no dispute raised as regards the death of the said scooterist by name Ganpat Bandekar and his wife Poonam which was proved by producing the postmortem reports under Section 294 of the Code of Criminal Procedure, 1973. The scooterist Ganpat Bandekar, aged 52 years and deceased Poonam G. Bandekar, aged 43 years as per the said reports had died due to the crushing injuries to the head and chest respectively. There were other injuries as well.

6. In the absence of examination of the said Sripal Singh, the entire case of the prosecution was based on the evidence of Elvis Gonsalves/PW1 who according to the prosecution had witnessed the accident and both the Courts below have placed implicit reliance and have found him to be a truthful

witness. The case of the prosecution was also based on the evidence of Rajaram Tari/PW5 who claimed that he acted as a panch witness to the scene of panchnama which was produced at Exhibit 24 colly. Rane/PW6 was the PSI at the relevant time and who had registered the complaint lodged by Gaonkar/PW7 and who was at the relevant time Police Inspector incharge of the Vasco Police Station. There is no dispute that it is Rane/PW6 who had recorded the statement of the said Gonsalves/PW1 on 31/01/2004. As already stated the said Sripal Singh who might have been the other eye witness was not examined.

7. The learned trial Court found that Gonsalves/PW1 was a chance witness who happened to pass by the said road at the time of the accident and had seen the fateful occurrence and although he was cross-examined by the defence at length and in the said cross-examination has expressed ignorance of certain details as regards the colour of the said scooter, presence of other vehicles other than the said Kinetic Honda scooter etc. he was consistent in his stand that the accident had taken place while the scooterist overtook the trailer and the accused had caused the said accident. Gonsalves/PW1 had admitted that he visited the Police Station in connection with his business and had acted as a panch witness in a murder case but the learned trial Judge held that those were not the disqualifications to discard his evidence since by chance he had witnessed the accident and as he had narrated all material

details of the accident in the manner the accident had occurred and since the witness was from Baina, Vasco-da-Gama and was proceeding in that direction, his passing by that side from Cortalim to Vasco was natural and could not be doubted.

8. The learned Additional Sessions Judge proceeded on the assumption that Gonsalves/PW1 was admittedly an eye witness and this the learned Additional Sessions Judge did inspite of a suggestion that he was not present at the time of accident and he had deposed to favour the police. The learned Additional Sessions Judge also observed that the statement made by Gonsalves/PW1 that the Kadamba bus driven by the accused was also trying to overtake simultaneously the Kinetic Honda and the trailer and in the bargain had dashed against the Kinetic Honda scooter and the rider and the pillion rider on the scooter had come under the wheel of the KTC bus were particularly not denied by the accused. In other words, both the Courts below have placed implicit reliance on the evidence of Gonsalves/PW1 and the learned trial Court on some circumstances suggesting that they were corroborative of the evidence of the said Gonsalves/PW1 .

9. Counsel on behalf of the accused contends that there is no evidence whatsoever as regards the length of the trailer truck driven by the said Sripal Singh, or as to what colour it was having before one could jump to the

conclusion that the colour found on the scooter was that of the bus of the accused. Learned Counsel further submits that Tari/PW5 did not support the panchnama and according to him i.e. the said Tari/PW5 if blue colour paint was found on the left hand side of the handlebar of the scooter, it is probable that the scooterist fell down after coming in contact with the said trailer truck. Referring to the tyre marks reflected in the complaint/autopsy report the learned Counsel contends that the same could have been those of the said trailer as well and the fact that in case the left hand side front bumper of the bus was discoloured and was dented that would show that the impact was on the front left hand side of the bus and falsify the version of Gonsalves/PW1 that the Kinetic Honda scooter had fallen under rear tyre of the bus. Learned Counsel also points out that the claim of Gonsalves/PW1 that he had reported the accident at the Police Station is not at all corroborated by Rane/PW6 who recorded his statement two days later i.e. to say on 31/01/2004. Learned Counsel further submits that the evidence of Gonsalves/PW1 was vague and otherwise was contradictory to the version of Rane/PW6 and his presence therefore could not be free from doubt. Learned Counsel further contends that his close association with the police might have compelled him to depose in favour of the prosecution and against the accused. It is also submitted that Gonsalves/PW1 also appears to be a stock panch witness of the police as he appeared in several cases.

10. Although two precious lives were lost in this case of accident Shri Gaonkar/PW7 appears to have taken it to be just another accident case, most casually. In this context reference could be made to ***Dalbir Singh V/s. State of Haryana and others (AIR 2000 SC 1677)*** wherein the Apex Court had observed that it had lamented two decades back that more people die of road accidents than by most diseases, so much so that the indian highways are among the top killers of the country. In case Gaonkar/PW7 had seen the lorry bearing no. GA-01-W-5881 parked away from the site as stated by him, there is no reference to the same in his complaint or the panchnama or the sketch and there is no explanation from either of the Investigation Officers as to why the said lorry was not reflected in the panchnama and the sketch prepared at the scene. Presumably when Gaonkar/PW7 visited the scene there was no version of Gonsalves/PW1 available to say that it is the KTC bus of the accused which had dashed the scooterist and there is nothing in the evidence of Gaonkar/PW7 even to suggest that he had inspected the said lorry if it was there away from the site, driven by the said Sripal Singh, to find out whether the scooterist had dashed against it. Not only that none of the vehicles involved were got inspected subsequently.

11. Although Tari/PW5 was examined in support of the panchnama, in fact he did not support the same, entirely. According to him the blue paint was stuck on the left hand side of the Kinetic Honda scooter but as per the

panchnama it was on his right side of the handle bar that the blue paint was stuck. The prosecution did not examine the other panch and one does not know why the prosecution did not examine PSI Patil, the author of the panchnama, to support the same. It is submitted by the learned Public Prosecutor that by then the said PSI Patil had retired but it is nobody's case that he was not available. If Tari/PW5 saw the blue paint stuck on the left hand side of the Kinetic Honda scooter, Shri Gaonkar/PW7 saw it on the right hand side of the handle bar. In other words the evidence on that aspect was contradictory. The learned trial Court therefore was not right in concluding that the evidence of Tari/PW5 added more strength by way of corroboration to the evidence of Gonsalves/PW1.

12. The learned Additional Sessions Judge did take a note about this inconsistency but found it to be insignificant as it did not go to the root of the matter because the statement of Gonsalves/PW1 that the KTC bus had dashed the Kinetic Honda scooter was not denied. The learned Additional Sessions Judge in coming to that conclusion entirely lost the sight of the fact that the burden to prove affirmatively its case is always on the prosecution and the prosecution cannot derive any benefit from the weakness or falsity of the defence. Falsity or weakness of defence version cannot be taken to establish the case of the prosecution. Suggestions put in cross-examination are no evidence at all against the accused and on the basis of such suggestions no

inference can be drawn against the accused that he admitted the fact referred to in the suggestions.

13. All that Gonsalves/PW1 was able to say in his evidence is his bare statement that the Kinetic Honda scooter fell under the rear tyre of the bus. Besides that, there was nothing in his evidence which could be vouched for. His statement that he went to Vasco Police Station and informed the police about the accident was not supported by PSI Rane/PW6 who stated that he came to know about the presence of Gonsalves/PW1 through his own sources and recorded his statement on 31/01/2004. Gonsalves/PW1 has stated that as a good citizen, two days after the accident, he went to the Police Station to give his statement and here again he stands falsified by the evidence of PSI Rane/PW6. In the same breath Gonsalves/PW1 stated that after he saw the accident he did not halt to see the accident. One fails to understand what sort of a good citizen Gonsalves/PW1 was, if the least which was expected of him he did not do i.e. to say to stop at the scene of accident and either extend his help to the victims or ensure that help was called for. The entire cross-examination of Gonsalves/PW1 shows that he is not at all aware of many vital facts which he would have been aware of had he really seen the accident. He has admitted that he did not remember whether besides his motorcycle, the KTC bus, the trailer and the Kinetic Honda there was any other vehicle passing. He has also stated that he did not know what happened to the KTC

bus, the trailer, the Kinetic Honda and both the deceased, after the accident. He did not know at what distance the KTC bus had stopped. He also did not know whether the scooterist or the pillion rider wore helmets although he stated that at the place of accident the road was straight, he could not tell at what distance it was straight. He did not know what was the position of the Kinetic Honda scooter after the accident or what injuries both the deceased had received. He was unable to tell for how much time he had witnessed the accident. Likewise he was unable to tell the damages sustained by the Kinetic Honda scooter or the KTC bus. He also did not know whether after he gave the report of the accident the Police told him to go to record his statement. He also did not know after how many days of the accident the police had recorded his statement. He stated that it might have been recorded after two or three days. Again he did not know whether he had given his statement at Vasco Police Station or the police had come to record his statement. He also stated that he did not recollect even faintly the clothes or their colours worn by the deceased at the time of accident. He admitted that his buses were plying from Vasco to Verna and on account of his business he visits the Police Station very often. He admitted that in the case of Ryan Fernandes he had acted as a panch witness at the instance of Rane/PW6 and Gaonkar/PW7 and besides the said case he had stood as panch witness in other cases. He further stated that on the date of the accident he had gone for food at Sheila Bar and Restaurant. The learned trial Court observed that his returning

towards Vasco was normal as the witness was from Vasco-da-Gama, but the learned trial Court failed to take note whether it was normal for a person to return as late as at 15.45 hrs., in case such a person had gone to take his lunch at Sheila Bar and Restaurant. He further stated that he was unable to judge the speed of the KTC bus. At the cost of repetition it may be stated that except for the bare statement that the Kinetic Honda scooter fell under the rear tyre of the bus, Gonsalves/PW1 was unable to give any details about the accident. Admittedly, he was a chance witness and therefore it was expected of the Courts below to have scrutinized his evidence closely before the same could have been accepted. The evidence of Gonsalves/PW1 when read as a whole does not at all inspire confidence and as such could not have been relied upon for basing a conviction against the accused more so when three vehicles were involved in the accident, all moving in the same direction. The circumstantial evidence was contradictory. Evidence which could have been obtained was also otherwise not obtained.

14. Considering the aforesaid circumstances, it has to be concluded that the prosecution had failed to prove its case against the accused beyond reasonable doubt. Accused therefore was entitled to be given benefit of doubt.

15. Consequently, the revision petition is hereby allowed. The judgments of both the Courts below are hereby set aside. Consequently, the accused

shall stand acquitted under Sections 279, 304-A IPC. The bail bonds if any shall stand cancelled.

N.A. BRITTO, J.

NH/-